

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARIA FAUSTA CILLI, COLOMBO MASI, :  
LUIS PEDRO BIVORT and MARIA ELENA :  
PELAYO, VALENTINA ETCHART, :  
SIMONA STACCIOLI, GIAMPAOLO :  
MONTOFINO and RENATA BOSCARIOL, :  
MAURICIO SERGI, FIORENZO FACCIONI :  
and PATRIZIA STORARI, LEONARDO :  
HILARIO SIMONE, CARLOS ARTURO :  
JOSE ULLA, and DECIO CARLOS :  
FRANCISCO ULLA, :  
-----X

Plaintiffs,

- against -

THE REPUBLIC OF ARGENTINA,

Defendant.  
-----X

04 Civ. 6594 (TPG)

OPINION

Plaintiffs are the beneficial owners of certain bond indebtedness issued by defendant The Republic of Argentina. The Republic defaulted on such indebtedness in December 2001 during a profound fiscal crisis. Plaintiffs are suing to recover amounts due to them as a result of the default and have moved for summary judgment. Plaintiffs also move to strike certain discovery requests made by the Republic.

The motion for summary judgment is denied. The motion to strike is granted.

## FACTS

The bond indebtedness at issue is governed by a Fiscal Agency Agreement dated October 19, 1994 (the "1994 FAA").<sup>1</sup> The 1994 FAA is the same agreement that governed the bond indebtedness on which this court granted summary judgment to the plaintiffs in Lightwater Corporation Ltd. v. Republic of Argentina, No. 02 Civ. 3804, 2003 WL 1878420 (S.D.N.Y. Apr. 14, 2003). Section 22 of the 1994 FAA states that the Republic waives sovereign immunity and consents to jurisdiction in any state or federal court in the borough of Manhattan in the City of New York. The 1994 FAA provides that the Republic's obligations on the bonds are unconditional and that failure to make any payment of principal or interest for 30 days after the applicable payment date constitutes an event of default. A declaration by the Republic of a moratorium on the payment of principal or interest on its public external indebtedness is an event of default as well. Paragraph 12 of the FAA provides for acceleration of principal if there is a failure to pay interest or a moratorium. If either of these events occurs,

each holder of Securities and such Series may by such notice in writing declare the principal amount of Securities of such Series held by it to be due and payable immediately . . . .

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<sup>1</sup> Some plaintiffs hold beneficial interests in bonds governed by a Fiscal Agency Agreement dated December 10, 1993 ("1993 FAA"). As explained in earlier decisions, the relevant provisions of the 1993 FAA for this opinion are functionally equivalent to those in the 1994 FAA. See, e.g., Greylock Global Distressed Debt Master Fund v. Republic of Argentina, No. 05 Civ. 4246, 2006 U.S. Dist. LEXIS 6476 (S.D.N.Y. Feb. 17, 2006).

On December 24, 2001 the Republic declared a moratorium on payments of principal and interest on the external debt of the Republic. The court refers to its previous opinions for a description of the circumstances of these defaults. Lightwater, 2003 WL 1878420, at \*2; Applestein v. Republic of Argentina, No. 02 Civ. 1773, 2003 WL 1990206, at \*1 (S.D.N.Y. Apr. 29, 2003). On August 10, 2004, plaintiffs individually sent notices to Bankers Trust Company, the Fiscal Agent of The Republic of Argentina, declaring the principal amounts of the debt securities held by plaintiff to be immediately due and payable.

The bonds that are the subject of this action are listed hereafter. Also listed are the amounts of the beneficial interests owned by plaintiffs.<sup>2</sup>

The following tables contain the necessary identifying information regarding each plaintiff's beneficial interests in bonds.

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<sup>2</sup> The court notes the distinction between bonds and beneficial interests. In some previous opinions, the court has simply referred to the plaintiffs as owners of "bonds," when in fact plaintiffs are technically owners of "beneficial interests in bonds." The Republic actually issues "a bond" to a depository. The depository, in some form, issues "participations" to brokers, who sell "beneficial interests" to purchasers. These beneficial interests are identified by reference to the underlying bond (CUSIP or ISIN number or both; date of issuance and maturity; rate of interest) and the principal amount of the beneficial interest. This distinction is discussed more fully in Million Air Corp. v. Republic of Argentina, No. 04 Civ. 1048, 2005 U.S. Dist. LEXIS 23904 (S.D.N.Y. Oct. 17, 2005).

Table 1.

<u>Plaintiff Beneficial Owner:</u>	Luis Pedro Bivort & Maria Elena Pelayo
<u>Face Value:</u>	U.S. \$ 92,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	ISIN No. US04114AR16
<u>Date Of Issuance:</u>	January 30, 1997.
<u>Date Of Maturity:</u>	January 30, 2017.
<u>Interest Rate/Payable:</u>	11.375 %
<u>Date Of Purchase:</u>	Various <u>unverified</u> dates between September 27, 2000 and August 2003.
<u>Acceleration:</u>	August 10, 2004.
<u>Contract Documents:</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account verification from Caja de Valores dated April 25, 2005.

Table 2.

<u>Plaintiff Beneficial Owner:</u>	Maria Fausta Cilli
<u>Face Value:</u>	U.S. \$ 13,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	ISIN No. US04114GD65
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	February 21, 2012.
<u>Interest Rate/Payable:</u>	12.375 %
<u>Date Of Purchase:</u>	May 10, 2004.
<u>Acceleration:</u>	August 10, 2004.
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statement from Banco del Fucino as of March 31, 2005.

Table 3.

<u>Plaintiff Beneficial Owner:</u>	Valentina Etchart
<u>Face Value:</u>	U.S. \$ 15,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	ISIN No. US04114AH34
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	Not provided.
<u>Interest Rate/Payable:</u>	8.375 %
<u>Date Of Purchase:</u>	December 22, 1993 ( <u>unverified</u> ).
<u>Acceleration:</u>	August 10, 2004.
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated December 10, 1993.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account verification from Caja de Valores dated May 12, 2005.

Table 4.

<u>Plaintiff Beneficial Owner:</u>	Fiorenzo Faccioni & Patrizia Storari
<u>Face Value:</u>	U.S. \$ 288,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	ISIN No. US04114BE93
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	April 7, 2009.
<u>Interest Rate/Payable:</u>	11.75 %
<u>Date Of Purchase:</u>	Various <u>unverified</u> dates between September 18, 2001 to November 20, 2001.
<u>Acceleration:</u>	August 10, 2004.
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statement from Credivento Credito Cooperativo as of March 31, 2005.

Table 5.

<u>Plaintiff Beneficial Owner:</u>	Colombo Masi
<u>Face Value:</u>	U.S. \$ 600,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	ISIN No. US04114GD65
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	February 21, 2012.
<u>Interest Rate/Payable:</u>	12.375 %
<u>Date Of Purchase:</u>	May 4, 2004 ( <u>unverified</u> ).
<u>Acceleration:</u>	August 10, 2004.
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statement from San Paolo IMI as of April 30, 2005.



Table 6.

<u>Plaintiff Beneficial Owner:</u>	Giampaolo Montino & Renata Boscarol
<u>Face Value:</u>	U.S. \$ 72,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	ISIN No. US04114GD65
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	February 21, 2012.
<u>Interest Rate/Payable:</u>	12.375 %
<u>Date Of Purchase:</u>	May 12, 2004 ( <u>unverified</u> ).
<u>Acceleration:</u>	August 10, 2004.
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statement from Cassa di Risparmio di Padova e Rovigo as of March 24, 2005.

Table 7.

<u>Plaintiff Beneficial Owner:</u>	Maurizio Sergi
<u>Face Value:</u>	U.S. \$ 50,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	ISIN No. US04114GD65
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	February 21, 2012.
<u>Interest Rate/Payable:</u>	12.375 %
<u>Date Of Purchase:</u>	May 13, 2004 (unverified).
<u>Acceleration:</u>	August 10, 2004.
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statement from MPS Banca Personale as of March 31, 2005.

Table 8.

<u>Plaintiff Beneficial Owner:</u>	Leonardo Hilario Simone
<u>Face Value:</u>	U.S. \$ 116,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114GF1; ISIN No. US04114GF14
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	December 19, 2008.
<u>Interest Rate/Payable:</u>	Variable.
<u>Date Of Purchase:</u>	December 12, 2001 ( <u>unverified</u> ).
<u>Acceleration:</u>	August 10, 2004.
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statement from Citicorp Financial Services Co. as of March 31, 2005.

Table 9.

<u>Plaintiff Beneficial Owner:</u>	Simona Staccoli
<u>Face Value:</u>	U.S. \$ 21,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114GD6; ISIN No. US04114GD65
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	February 21, 2012.
<u>Interest Rate/Payable:</u>	12.375 %
<u>Date Of Purchase:</u>	April 13, 2004 ( <u>unverified</u> ).
<u>Acceleration:</u>	August 10, 2004.
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statement from Banca Monteriggioni as of March 31, 2005.

Table 10a.

<u>Plaintiff Beneficial Owner:</u>	Carlos Arturo Jose Ulla
<u>Face Value:</u>	U.S. \$ 117,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	ISIN No. US04114AN02
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	October 9, 2006.
<u>Interest Rate/Payable:</u>	11 %
<u>Date Of Purchase:</u>	August 2000 and December 2000 ( <u>unverified</u> ).
<u>Acceleration:</u>	August 10, 2004.
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statement from Caja de Valores as of March 31, 2005.

Table 10b.

<u>Plaintiff Beneficial Owner:</u>	Carlos Arturo Jose Ulla
<u>Face Value:</u>	U.S. \$ 99,930.00
<u>CUSIP No., ISIN No., BB No.:</u>	ISIN No. US04114GF14
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	December 19, 2008.
<u>Interest Rate/Payable:</u>	Variable.
<u>Date Of Purchase:</u>	Various <u>unverified</u> dates between July 2001 and September 2001.
<u>Acceleration:</u>	August 10, 2004.
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statement from Caja de Valores as of March 31, 2005.

Table 11.

<u>Plaintiff Beneficial Owner:</u>	Decio Carlos Francisco Ulla
<u>Face Value:</u>	U.S. \$ 405,620.00
<u>CUSIP No., ISIN No., BB No.:</u>	ISIN No. US04114GF14
<u>Date Of Issuance:</u>	Not provided.
<u>Date Of Maturity:</u>	December 19, 2008.
<u>Interest Rate/Payable:</u>	Variable.
<u>Date Of Purchase:</u>	Various <u>unverified</u> dates between July 2001 and September 2001.
<u>Acceleration:</u>	August 10, 2004.
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statement from Caja de Valores as of March 31, 2005.

## DISCUSSION

This Court has already granted summary judgment in other cases to plaintiffs seeking to collect on the Republic's defaulted bonds issued under the 1993 FAA and those issued under the 1994 FAA. This has occurred in Lightwater, supra, and other cases. Only certain specific issues need to be discussed in connection with the present motion.

### Acceleration of Principal

As noted in the tables above, plaintiffs have properly accelerated the principal on their beneficial interests.

### Standing and Proof of Ownership

In the two opinions in Fontana v. Republic of Argentina, 415 F.3d 238 (2d Cir. 2005), and Applestein v. Province of Buenos Aires, 415 F.3d 242 (2d Cir. 2005), the Second Circuit has held that an owner of a beneficial interest, such as the plaintiffs here, must receive authorization from the registered holder of the bond before it may sue, but that such authorization may be granted subsequent to the filing of a lawsuit. Alternatively, the Republic may waive the authorization requirement.

At a hearing on September 28, 2005, the court engaged the Republic in a discussion of what it would proof it would require before agreeing to waive the authorization requirement. See Transcript, Sept. 28, 2005, H.W. Urban GmbH



v. Republic of Argentina (02 Civ. 5699). The result of that hearing was an agreement that the Republic will waive such objections on two conditions. The first condition is that the plaintiff must provide proof of current ownership. Id. The second condition has to do more precisely with the time of ownership. The plaintiff must furnish proof of when the purchase occurred, or if such purchase occurred before the default date of December 24, 2001, proof of ownership as of the default date is sufficient. Id. Since the Republic would not owe unpaid interest to a plaintiff for periods of time after the default when that plaintiff did not own the beneficial interests, this second condition allows the Republic to determine the precise date when a plaintiff holder's right to receive interest began.

Here, plaintiffs have supplied proof of current ownership. The account statements of March, April and May 2005 are sufficient for this. But none of the plaintiffs has adequately demonstrated when they acquired their beneficial interests or that they owned the interests as of December 24, 2001. Thus they have not fully met the Republic's conditions for waiving its objection to standing.

#### Discovery Requests

Plaintiffs also move to strike discovery requests made by the Republic associated with a potential champerty defense. For the reasons stated in Mazzini v. Republic of Argentina, No. 03 Civ. 8120, 2005 U.S. Dist. LEXIS 5692

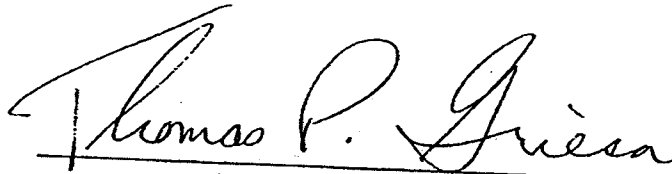
at \*27-\*28 (S.D.N.Y. Mar. 31, 2005), the motion to strike these discovery requests is granted.

CONCLUSION

For the reasons stated, plaintiffs' motion for summary judgment is denied. Plaintiffs' motion to strike is granted.

SO ORDERED.

Dated: New York, New York  
March 20, 2006

A handwritten signature in cursive script, reading "Thomas P. Griesa", written over a horizontal line.

THOMAS P. GRIESA  
U.S.D.J.